

CRIMINAL YEAR SEMINAR

**April 30, 2021
Webinar**



Criminal Code Update

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2021 APAAC Criminal Year in Review: The Arizona Criminal Code



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13-116. Double Punishment



An act or omission which is made punishable in different ways by different sections of the laws may be punished under both, but in no event may sentences be other than concurrent. An acquittal or conviction and sentence under either one bars a prosecution for the same act or omission under any other, to the extent the Constitution of the United States or of this state require.

State v. Watson, 248 Ariz. 208 (App. 2020)

Issue:

Can the court sentence a defendant to a consecutive term of probation for one offense and a term of imprisonment for another if both convictions stem from the same act?



State v. Watson, 248 Ariz. 208 (App. 2020)



¶ 20 “The State, in the exercise of its broad charging discretion, chose to charge Watson with a single count of fraudulent schemes that encompassed every theft he committed.”

n.3 “The State could have charged Watson with a separate count of fraudulent schemes and artifices for each victim.”

13-203(A). Causal relationship between conduct and result; relationship to mental culpability—Causal relationship



A. Conduct is the cause of a result when both of the following exist:

1. But for the conduct the result in question would not have occurred.
1. The relationship between the conduct and result satisfies any additional causal requirements imposed by the statute defining the offense.



State v. Aragon (Fontes), 249 Ariz. 571
(App. 2020)

Issue:

Is a defendant entitled to a jury instruction on superseding cause when the victim's conduct may have increased the risk for the particular harm occurring, but the risk of harm the defendant foreseeably created was the same risk that the victim suffered?





State v. Aragon (Fontes), 249 Ariz. 571
(App. 2020)

Generally high standard to obtain
superseding intervening cause
instruction



Issue arises with some frequency; for a recent oral
argument on this topic in a pending appeal
w/interesting hypotheticals, see:

[State v Quinonez CR1 03 24 21 CR19 0622 -
YouTube](#)

Negligent homicide case - wrong-way driver-
defendant on highway; alleged v's impairment
(BAC .117) and speed were superseding causes to
relieve him of criminal liability

13-603(C). Authorized disposition of offenders— Restitution



C. If a person is convicted of an offense, the court shall require the convicted person to make restitution to the person who is the victim of the crime or to the immediate family of the victim if the victim has died, in the full amount of the economic loss as determined by the court and in the manner as determined by the court. . . .

13-805(A). Jurisdiction—Court ordered payment



A. The trial court shall retain jurisdiction of the case as follows:

1. ... for purposes of ordering, modifying and enforcing the manner in which court-ordered payments are made until paid in full or until the defendant's sentence expires.

2. For all restitution orders in favor of a victim, including liens and criminal restitution orders, for purposes of ordering, modifying and enforcing **the manner in which** payments are made until paid in full.

State v. Morgan, 248 Ariz. 322 (App. 2020)



Issue:

Can the trial court retain jurisdiction over future restitution requests, without setting a deadline for those requests to be presented?



13-708(D). Offenses committed while released from confinement—Offense committed while released on bond or on the person's own recognizance



D. A person who is convicted of committing any felony offense that is committed while the person is released on bond or on the person's own recognizance on a separate felony offense or while the person is escaped from preconviction custody for a separate felony offense shall be sentenced to a term of imprisonment two years longer than would otherwise be imposed for the felony offense committed while on release.

State v. Moreno, 249 Ariz. 593 (App. 2020)



Issue:

Does a defendant cease being “on release” for the purposes of 13-708(D) when, at the time of the aggravating felony, he or she was in custody for an unrelated charge?



13-901.01(A) Probation for persons convicted of possession & use of controlled substances; treatment; prevention; education—First conviction



A. Notwithstanding any law to the contrary, any person who is convicted of the personal possession or use of a controlled substance or drug paraphernalia is eligible for probation. The court shall suspend the imposition or execution of sentence and place the person on probation.

State v. Green, 248 Ariz. 133 (2020)



Issue 1:

Is a conviction for possession of drugs for sale, whether completed or inchoate, a disqualifying conviction for determining eligibility for mandatory probation under 13-901.01?

Issue 2:

Does 13-901.01 apply equally to qualifying inchoate and completed drug offenses?



13-921(B). Probation for defendants under 18 years of age; dual adult juvenile probation—Expungement



A. The court may enter a judgment of **guilt and place the defendant on probation pursuant to this section** if all of the following apply:

1. The defendant is under eighteen years of age at the time the offense is committed.
2. The defendant is convicted of a felony offense.
3. The defendant is not sentenced to a term of imprisonment.
4. The defendant does not have a historical prior felony conviction.

B. **If the court places a defendant on probation pursuant to this section,** all of the following apply:

1. Except [in situations not relevant here], if the defendant successfully completes the terms and conditions of probation, the court may set aside the judgment of guilt, dismiss the information or indictment, expunge the defendant's record and order the person to be released from all penalties and disabilities resulting from the conviction.

13-905. Setting aside judgment of convicted person on discharge;
application; release from disabilities; firearm possession.



- A. Except as provided in subsection K of this section,** every person convicted of a criminal offense, on fulfillment of the conditions of probation or sentence and discharge by the court, may apply to the court to have the judgment of guilt set aside...
- K. This section does not apply to a person who was convicted of the following:
- ...
 - 2. An offense for which the person is required or ordered by the court to register pursuant to § 13-3821 [as a sex offender].
 - ...
 - 4. A felony offense for which the victim is a minor under fifteen years of age.



Age Confirmation

We need to verify your age

Are you 18 or older?

YES

NO

State v. Furlong, 249 Ariz. 579 (App. 2020)

If a juvenile who has no historical prior felony convictions pleads guilty to two felonies in which the victim is a minor under fifteen years of age, is placed on lifetime adult probation (including sex offender registration and a term of jail, but no imprisonment), is discharged from probation (and the sex offender registration requirement) after apparently successfully completing probation, and then seeks to set aside the judgment of guilt and expunge his record, which statute—A.R.S. 13-905 or A.R.S. 13-921—controls?

13-1202(B) Threatening or intimidating—Enhancement



B. Threatening or intimidating pursuant to subsection A, paragraph 1 or 2 is a class 1 misdemeanor, except that it is a class 6 felony if:

...

2. The person is a criminal street gang member.

State v. Arevalo, 249 Ariz. 370 (2020)

Issue:

Does 13-1202(B)(2) violate the defendant's right to substantive due process because it enhances a defendant's sentence based solely upon gang status?



13-1204(A)(8)(I) Aggravated assault



A. A person commits aggravated assault if the person commits assault as prescribed by section 13-1203 under any of the following circumstances:....

8. If the person commits the assault knowing or having reason to know that the victim is any of the following:....

(i) A public defender while engaged in the execution of any official duties or if the assault results from the execution of the public defender's official duties.

State v. Wilson, 250 Ariz. 197 (App. 2020)

Issue:

Does a county contract indigent defense counsel qualify as a “public defender” for purposes of 13-1204(A)(8)(i)?



State v. Wilson, 250 Ariz. 197 (App. 2020)

Consistent with COA's broad interpretation of A.R.S. 13-1204(A)

Prior COA case:

State v. Reed, 171 Ariz. 677, 678 (App. 1992) (rejecting argument that a school bus driver employed by a school district is not “employed by any school” under aggravated assault statute, reasoning “[n]othing in the [statute]’s language ... suggests a legislative intent to discriminate between public and private school employees”)



13-1802(A). Theft—Elements



A. A person commits theft if, without lawful authority, the person knowingly:

1. Controls property of another with the intent to deprive the other person of such property

13-1814. Theft of means of transportation



A. A person commits theft of means of transportation if, without lawful authority, the person knowingly does one of the following:

1. Controls another person's means of transportation with the intent to permanently deprive the person of the means of transportation.

State v. Carter, 249 Ariz. 312 (2020)

Issue:

Is theft of a means of transportation a lesser-included offense of robbery?



Theft=lesser included offense of Theft of a Means of Transportation

Theft=lesser included offense of Robbery

Theft of a Means of Transportation=/= lesser included offense of Robbery



State v. Carter, 249 Ariz. 312 (2020)

Leading case for lesser-included offense analysis

2 requirements for a lesser-included *jury instruction*:

- 1) lesser-included offense as a matter of law under *Blockburger* test
- 2) supported by the evidence

- ***See also State v. Agueda***, 481 P.3d 1179 (Ariz. App. Feb. 11, 2021) (holding contributing to child delinquency is lesser-included of sexual conduct w/minor, applying rule from *State v. Sutton*, 1969 AZSC case)

- *Petition for review pending in AZSC*

13-2904(A)(1). Disorderly conduct—Fighting, violent or seriously disruptive behavior



A. A person commits disorderly conduct if, with intent to disturb the peace or quiet of a neighborhood, family or person, or with knowledge of doing so, such person:

1. Engages in fighting, violent or seriously disruptive behavior

Prosise v. Kottke, 249 Ariz. 75 (App. 2020)

Issue:

Can a defendant be convicted of violating 13-2904(A)(1) when the State does not prove that the victim's peace was indeed disturbed by the defendant's conduct?



Prosise v. Kottke, 249 Ariz. 75 (App. 2020)



Is *Julio L./Prosise* consistent with statutory language?

(A)1. Engages in fighting, violent or seriously disruptive behavior

Holding requires proof v was disturbed w/o determination that Δ engaged in “seriously disruptive behavior”

Prosise v. Kottke, 249 Ariz. 75 (App. 2020)



Essentially same standard of proof? Maybe not.

The woman unable to feel FEAR: Mother, 44, has been held at gunpoint, beaten and approached poisonous snakes - but is unfazed due to rare genetic condition

Woman, known as SM, has been studied by neuroscientists for 15 years

Has Urbach-Wiethe disease, which has caused parts of her brain to harden

Her amygdala - which are crucial for the fear response - have wasted away

Only 400 people worldwide have been identified with the condition

Has a normal IQ and feels other emotions in the same way as others

Traumatic events like being attacked don't leave her with bad memories

Researchers believe her case could help develop treatment for PTSD ***

*****from Google – might be fake, IDK**

13-3405(A). Possession, use, production, sale, or transportation of marijuana—Prohibited acts.

A. A person shall not knowingly:

...

4. Transport *for sale*, import into this state or offer to transport *for sale* or import into this state, sell, transfer or offer to sell or transfer marijuana.



State v. Farid, 249 Ariz. 457 (App. 2020)

Issue:

Does 13-3405(A)(4) require proof that the defendant imported marijuana “for sale”?



13-3415(A). Possession, manufacture, delivery and advertisement of drug paraphernalia—Use or possess with intent to use.



A. It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a drug in violation of this chapter. Any person who violates this subsection is guilty of a class 6 felony....

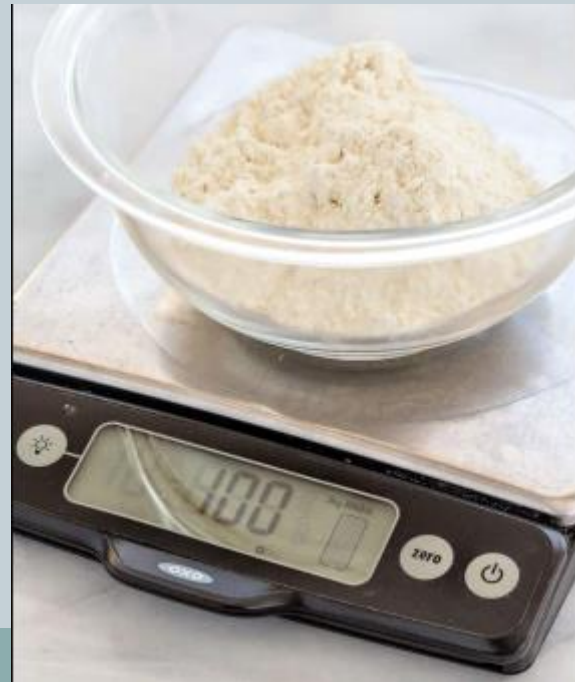
2. "Drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a drug in violation of this chapter.

State v. Soza, 249 Ariz. 13 (App. 2020)



Issue:

Does a defendant commit multiple violations of 13-3415(A) when he or she possesses multiple objects of drug paraphernalia during one instance?



State v. Soza, 249 Ariz. 13 (App. 2020)



***See also Romero-Millan v. Barr*, Arizona Supreme Court No. CV-20-0128-CQ (certified question from 9th Circuit)**

- ✦ CQ1: Is Arizona's possession of drug paraphernalia statute, A.R.S. § 13-3415, divisible as to drug type?
- ✦ CQ2: Is Arizona's drug possession statute, A.R.S. § 13-3408, divisible as to drug type?
- ✦ CQ3: Put another way, is jury unanimity (or concurrence) required as to which drug or drugs listed in A.R.S. § 13-3401(6), (19), (20), or (23) was involved in an offense under either statute?

Oral argument held on 3/11/21

41-1604.09(I) Parole eligibility certification; classifications; appeal; recertification; applicability; definition—Applicability.



I. This section applies to either of the following:

1. A person who commits a felony offense before January 1, 1994.
2. A person who is sentenced to life imprisonment and who is eligible for parole pursuant to section 13-716 or 13-718.

Chaparro v. Shinn, 248 Ariz. 138 (2020)



Issue:

Whether, in light of 41-1604.09, a person convicted of first degree murder following a jury trial for actions that took place on or after January 1, 1994, is parole eligible after 25 years when the sentencing order states that the defendant is sentenced to “life without possibility of parole for 25 years?”

